**NC COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Clarion Hotel
320 Hillsborough Street
Raleigh, NC

November 19, 2009

Attending:

Commission Members: Dr. Richard Brunstetter, Emily Moore, Jerry Ratley, Judith Ann Dempsey, Dr. Thomas Gettelman, Nancy E. Moore, Dorothy O'Neal, Dr. Greg Olley, John Owen, Pamela Poteat, Elizabeth Ramos, Don Trobaugh, Dr. James W. Finch, Diana Antonacci, Jennifer Brobst, Cindy Ehlers, John Haggerty, A. Joseph Kaiser, Elizabeth MacMichael, Phillip Mooring, David Turpin, Deby Dihoff

Commission Members Excused: John R. Corne, Carl W. Higginbotham, Ranota Thomas Hall, Norman Carter, Thomas Fleetwood, Sandra DuPuy, Laura Coker, Larry Pittman,

Division Staff: Leza Wainwright, Steven Hairston, W. Denise Baker, Marta T. Hester, Andrea Borden, Amanda Reeder, William Bronson, Stuart Berde, Art Eccleston, Glenda Stokes, Tracy Ginn, Janice White, Jim Jarrard, Joanna Forester, J. Luckey Welsh

Others: Kim Raynor, Jodi Bloom, Rashad Rahmaan, Wendell Wells, M. Doug Ginn, Jim Shaheen, Ann Rodriquez, Tara Fields, Annaliese Dolph, Erin McLaughlen, Louise Fisher, Diane Pomper

Handouts:

- Revised Agenda
- Use of State Hospitals Seven (7) Day or Less Length of Stay, by LME
- Distribution of Recurring and Non-Recurring Services Funding Reductions
- Pseudoephedrine Memo and Training Presentation
- Staff Qualification Workgroups
- DMH/DD/SAS & DSOHF Response to Novel Influenza A Presentation
- Ethics Education Training Information
- Access to Healthcare: Traumatic Brain Injury in the MH/DD/SAS System Presentation
- Map of State Facilities
- Commission Orientation Manual
- Request of Waiver of Rule 10A NCAC 27I .0606

Mailed Out Packet:

- November 19, 2009, Commission Agenda
- Draft August 20, 2009, Commission Meeting Minutes
- November 19, 2009, Commission Meeting Information
  - Proposed Amendment of 10A NCAC 27G .0504 – Clients Right Committee
  - Proposed Amendment of 10A NCAC 26E .0603 – Requirements for Transmission of Data

Call to Order

Dr. Greg Olley, Vice-Chairman, chaired the November meeting. Dr. Olley called the meeting to order at 9:38am. He asked for a moment of silence and introductions from the members of the NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission), and the public. Dr. Olley also read the State Ethics reminder and the list of excused absences.

Approval of the Minutes

Upon motion, second and unanimous vote, the Commission approved the minutes of the August 20, 2009 Commission meeting.

Chairman's Report

Dr. Olley stated that the proposed 2010 schedule was on the agenda for adoption. He noted that the Commission is operating under the resources constraints that the Division faces. Although the Commission and its Committees will continue to meet quarterly, meetings for the Rules and Advisory Committees will now convene on the same day.

Director's Report – NC Division of MH/DD/SAS

Leza Wainwright, Director, NC DMH/DD/SAS, discussed how the Division had implemented some of the reductions that were required by the passage of the new appropriations for this state fiscal year. Ms. Wainwright began with a review of the handout on *DHHS - DMH/DD/SAS Distribution of Recurring and Non-Recurring Services Funding Reductions.* She advised the Commission of the following:

- A sixteen million dollar reduction in the Division's budget and a $4,017, 219 reduction in funding for children with emotional disturbances and mental illness.
- The most significant reduction in the Division's funding was a $40 million dollar non-recurring.
- An overall reduction of 16% of total funding, with the reduction being spread among the Local Management Entities (LME) in widely variable percentages. The lowest in any given LME is Durham, which experienced a reduction of 6.85%. The highest is the Beacon Center where their reduction totaled 60.6%. The only community where the LMEs said that they did not believe there was going to be an impact was Guilford County, because they felt that county money is available and would possibly mitigate the reduction in state funds.

Ms. Wainwright received the following questions and comments from the Commission:

- John Owen, Commission member, commented on people "falling through the cracks" and stated that there was a back log in the hearing office to get approved for disability and inquired about the number of people not receiving services. Ms. Wainwright estimated that approximately 24,000 people would not receive service.
- Don Trobaugh, Commission member, requested a status report on recoupment efforts related to a $226 million overpayment of Medicaid funds. Mr. Trobaugh questioned Secretary Cansler regarding this matter at the August Commission meeting, citing a newspaper article as his source, and was advised that the Attorney General's office was actively investigating this matter. Ms. Wainwright responded that the overpayment related to community support services and noted that the Division of Medical Assistance (DMA) has been successful in getting some recoupment in some cases; other cases are still in the legal process. She added that some of the companies involved have since gone out of business. Ms. Wainwright stated that when the money is repaid, the federal government will get two-thirds of the funds recouped; the remaining third would be deposited in the DMA budget.

- Mr. Trobaugh continued saying the article attributed the overpayment to poor planning and monitoring and questioned if the Division now has procedures in place to prevent this from happening again. Ms. Wainwright stated that one of the Division's watch words is "lessons learned." She added that there is an increased effort to require providers to document their capacity to perform the service as required; this includes staff and other relevant components of the agency.
- Debra Dihoff, Commission member, asked if the Division would be posting details of budget cuts experienced by individual LMEs on its website for review by consumers. Ms. Wainwright responded that the Division had not planned to post this information on the website, because the Division did not put forward a template, and each LMEs plan is in a completely different format. Ms. Wainwright noted that it is, however, public information available for review; she added that some LMEs have also posted their plans on their agency's web site.
- Mr. Owen asked about the status report of a peer support definition. Ms. Wainwright stated that the community support service is being abolished effective June 30, 2010. As part of that legislation, the Division was also directed to submit separate service definitions for case management and peer support. The State Plan Amendment (SPA) for peer support has already been submitted. The SPA for case management is still in draft form; however, the programmatic side of it is complete, and the Division is waiting for the rate setting side to be completed. The Division plans to propose that payment for case management on a 15 minute unit be discontinued and that it be reimbursed on a case rate basis. This should pose less of an administrative burden on providers and should give more flexibility in the use of case management.
- Judy Dempsey, Commission member, asked if there was a way to reduce the paper work. Ms. Wainwright stated the Division is working on is a paperwork reduction process.
- Betsy MacMichael, Commission member, stated that she heard that effective January 2010, all the endorsed providers are going to be required to have full time Medical Directors on staff. Ms. Wainwright responded that this was not true.
- Cindy Ehlers, Commission member, asked if case management would be a direct enrolled service or if it is going to still be billed through the LMEs and questioned if LMEs will get some kind of allocation to disburse. Ms. Wainwright stated that case management (when the SPA is approved) will still be a directly enrolled service for Medicaid and that payment will go to the Provider. For state funds, all of the dollars are managed by the LME; it will not be the same rate as when area authorities used to get a case rate for CAP.
- John Haggerty, Commission member, asked how the concept of a clinical home fits into this. Ms. Wainwright responded that the critical access behavioral health agency becomes the clinical home for people with mental health and substance abuse diagnoses.

Director's Report – NC Division of State Operated Healthcare Facilities

J. Luckey Welsh, Director, NC Division of State Operated Healthcare Facilities (DSOHF), gave an overview of the new Division and stated that Secretary Cansler made a decision to form this Division to concentrate on the state facilities operated in North Carolina. Mr. Welsh stated that he was looking forward to getting acquainted with the Commission members. Mr. Welsh reviewed the map identifying the locations of state facilities. He added that the Division has put together performance measures for all of its facilities and a strategic plan with direction from Secretary Cansler. Mr. Welsh stated that as an organization they also have to be well managed financially. Mr. Welsh further stated that opinions of any system or facility is shaped by what one reads and hears; he noted, however, that there are dedicated professionals working within the facilities, and there is a zero tolerance policy in place.

Mr. Welsh briefly discussed delays in admission to state psychiatric hospitals and the reduced number of hospital beds available since 2001. He stated that they plan to work cooperatively and in partnership with the LMEs and described the LMEs as the coordinator of care responsible. He noted that LMEs should consider community placement, community outpatient services, and community hospitals for placement; he added that state hospitals should be considered as a last resort. He noted that efforts are underway to build available beds as quickly as possible. Ms. Wainwright announced that approximately 47 new beds are going online this year in the community hospitals. Mr. Welsh linked bed availability to appropriations by the General Assembly.

Mr. Welsh received the following questions and comments from the Commission:

- Mr. Trobaugh asked about an article in the Greensboro newspaper (July 2009) regarding a gag order at Cherry Hospital, 192 abuse cases, and the "child molester" who is a medical director. Mr. Welsh stated that there is no gag order on employees in that facility. Mr. Welsh further stated that what they may have been referring to is a Joint Commission Policy, which requires all hospitals to have a policy on disruptive behavior in their organization. He described the quote as an excerpt from a policy that exists in every hospital in the state.
- Ms. Ehlers asked Mr. Welsh about individuals transitioning out of developmental centers. Mr. Welsh stated that there are approximately 60 individual families who would like to have their loved ones in the facilities cared for in an outpatient setting. The Division works with the families to move them into those settings as they become available.
- Phillip Mooring, Commission member, commended the Department and the Division for working to continue to improve state facilities.

2010 Proposed Meeting Schedule

Upon motion, second, and unanimous vote, the Commission approved the proposed 2010 meeting schedule.

Request for Waiver of Rule 10A NCAC 27I .0606

Ms. Wainwright discussed a request to waive the Commission Rule 10A NCAC 27I .0606, Hearing Schedule and Composition of the Panel. This rule relates to the Non-Medicaid Appeal process and was written pursuant to the Commission's statutory authority. The Division is requesting a waiver of Rule 10A NCAC 27I .0606 to allow the Division to convene the Non-Medicaid hearings with a Division Chairman in lieu of the full Panel. This request is based, in part, upon the following factors: 1) the current number of appeals pending; 2) the increased number of appeals anticipated; 3) the fact that Rule 10A NCAC 27I .0608 only allots 60 days for the Division to issue a written decision from the date it receives the appeal request; and 4) the difficulty convening a separate Panel to hear each appeal filed. The Division anticipates that a waiver of Rule 10A NCAC 27I .0606 will permit the Division to process Non-Medicaid Appeal request in a more timely manner.

Upon motion, second and unanimous vote, the Commission approved the waiver of Rule 10A NCAC 27I .0606 through the end of the state fiscal year (June 30, 2010).

Proposed Amendment of 10A NCAC 27G .0504 – Client Rights Committee

Stuart Berde, Acting Chief, Advocacy and Customer Service Section, NC Division of MH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .0504 – Client Rights. The amended language is necessary to update the rule to conform to current developments in Mental Health. S.L. 2009-190, House Bill 1087, amended N.C.G.S. § 122C-64, Human Rights Committees to require that provider agencies have client rights committees. There is one

editorial change to the rule from the previous review by the Commission: to change LME Clients Rights Oversight Committee to LME Clients Rights Committees and Provider Client Rights Assurance Committees to Provider Client Rights Committees to make the names consistent with the statute. The change would be reflected throughout the rule where appropriate. This is a Commission rule being presented for approval for publication.

Dr. Berde received the following questions and comments from the Commission:

- Ms. MacMichael asked if this rule would appear along with the noted change during the public comment. Dr. Berde responded yes. Ms. MacMichael also asked if the consumer had an issue and all avenues have been exhausted, which committee they would go to for assistance. Dr. Berde responded that if there were a complaint filed, the Division has another set of rules for the response to complaints filed to the LME.

Upon motion, second, and unanimous vote, the Commission approved the amendment of Rule 10A NCAC 27I .0606 – Clients Rights to be published in the NC Register for public comment.

Proposed Amendment of 10A NCAC 26E .0603 – Requirements for Transmission of Data

William Bronson, Drug Control Unit Manager, Community Policy Management Section, NC Division of MH/DD/SAS, presented the proposed amendment of 10A NCAC 26E .0603 – Requirements for Transmission of Data. This rule is being presented to the Commission to comply with a legislative mandate contained in Session Law 2009-438 (Senate Bill 628), that changes the reporting requirements of pharmacies distributing controlled substances. Prior to Session Law 2009-438, pharmacies reported distribution twice per month; the law now requires pharmacies to report such distributions within seven (7) days of dispensing the prescription. This is a Commission rule being presented for approval for publication.

Upon motion, second, and unanimous vote, the Commission approved the amendment of Rule 10A NCAC 26E .0603 – Requirements for Transmission Data to be published in the NC Register for public comments.

Pseudoephedrine Training

Mr. Bronson gave a presentation to the Commission on their responsibility with regard to the *Methamphetamine Lab Prevention Act of 2005.* Session Law 2005-434, HB 248 granted the Commission for MH/DD/SAS authority to control pseudoephedrine products, to develop training and education programs for employees where these products are available for sale, and to approve these training programs for implementation by retailers affected by the legislation. The presentation was for informational purposes only.

Mr. Bronson received the following questions and comments from the Commission:

- Dr. James Finch, Commission member, asked if there was anything comparable in the CSRS legislation that mandates education for pharmacies in their role in minimizing abuse of prescription medicine. Mr. Bronson responded that there is not in the rules or the regulations.
- John Owen, Commission member, questioned the use of Coke bottles in this process. Mr. Bronson referred to this as a "shake and bake" process, which eliminates use of a Bunsen burner.

Access to Healthcare: Traumatic Brain Injury (TBI)

Janice White, TBI Program Coordinator, Community Policy Management Section, NC Division of MH/DD/SAS, gave a presentation on "*Access to Healthcare: Traumatic Brain Injury."* In the

future, the Commission will be looking at rules for licensure of residential facilities for TBI consumers, and Ms. White provided a brief overview regarding the issues of access to healthcare for individuals with TBI in our system.

Ms. White received the following questions and comments from the Commission:

- Mr. Mooring asked about the Division's response to returning veterans. Ms. White stated that they are working with a committee, and all service members are encouraged to access their federal benefits first, if they have them. She further added that North Carolina does have an extensive plan of how to help returning veterans.
- Mr. Owen stated that aside from direct blast injuries, there are also shock wave injuries to the brain, and the National Guard only has five years to detect a service related injury, and the symptoms for shock wave injuries can be hard to detect. Ms. White responded that shock wave injuries are included and advised there is extensive research being done at the Salisbury Veterans Administration by Dr. Robin Hurley on the effects of shock waves.
- Ms. Ehlers asked for an update on the TBI Waiver. Ms. White stated that they are preparing to re-examine the waiver. The NC Division of Medical Assistance now has the mandate to take a look at the TBI waiver to determine how it may be implemented in our state.
- Dr. Finch stated when the high risk groups were discussed, individuals with a history of substance abuse were not identified as a high risk group. Ms. White stated that the HRSA Grant is being used to develop training specifically for substance abuse providers related to TBI. This will include helping to identify individuals with TBI.

Presentation of Revised NC Commission for MH/DD/SAS Web Page

W. Denise Baker, Team Leader, Division Affairs Team, Operations Support Section, NC Division of MH/DD/SAS gave a presentation on the newly revised Commission web page, which is located on the public web page of the Division. Ms. Baker and her Team updated information to reflect the Commission's role, membership, and function. The website now contains links to the NC General Assembly and to the OAH website. Also added is a link to the NC Register, which will allow the public to access published rules via the Commission's webpage. The Commission Chair, consumers, and representatives from both the LME and Provider community were consulted in making the changes to the web page. Commission members responded favorably to the changes and raised the following:

- Whether individual members of the Commission have the capacity to speak for the Commission as a whole and their role as lobbyists. Ms. Baker suggested that members consider whether the Commission has taken action on a given matter in deciding how to respond to questions related to that issue. She suggested consultation with the Ethics Commission regarding the Commission member's ability to "lobby" on behalf of their constituents.

Staff Qualifications Workgroup Update

Dr. Art Eccleston, Clinical Policy Section, NC Division of MH/DD/SAS, gave an update on the Staff Qualifications Workgroup. Dr. Eccleston stated that the workgroup began almost three years ago and was established as a result of feedback from the 2007 Commission retreat. Dr. Eccleston reviewed the handout, *Staff Qualifications Workgroup – Development of a Competency Based System of Care*.

Dr. Eccleston stated that the Workgroup is currently in the first phase of the plan *Develop Core Competency Model*. Dr. Eccleston stated that the group is focused upon developing competencies that they think should be applied to individuals working in the communities as opposed to

individuals working in state facilities. Dr. Eccleston also reviewed a draft of the competencies that the workgroup has developed. Dr. Eccleston stated that there are nine competency domains (broad areas which subsume skill standards). The domains and the skill standards were adapted from a document called "Community Skill Standards"; additional skill standards were developed from other competency documents. The workgroup's next step is to develop behavioral descriptors that would serve to help measure whether someone has met a skill standard.

Dr. Eccleston received the following questions and comments from the Commission:

- Mr. Owen asked if there had been any thought to coordinating with the Community College System, and Dr. Eccleston stated that it has been discussed; however, the workgroup is not at that stage yet. This issue will be examined during the curriculum development phase.
- Ms. MacMichael stated that in the community there is such a lack of qualified mental health professionals who know how to communicate with individuals who have developmental disabilities and commended the workgroup on having domain #2, Skill Standard 2.6 & 2.7 of the handout.
- Dr. Finch commented on the national competency standards the workgroup used as primary sources and advised that caution be used in narrowing the mental health nurse practitioner competency to psychiatry only. He added that half of the positions working in a substance abuse setting in the state are non-psychiatrist.
- Dr. Thomas Gettelman, Commission member, asked how the core competency goals tie to reimbursement of services. Dr. Eccleston responded that it would tie into reimbursement for the provider that the staff works for; however, the workgroup has not reached this topic yet.
- Dorothy O'Neal, Commission member, asked a question regarding the professional development and expressed concern that the word "ethics" is not prominent in that domain of competency statements. Mrs. O'Neal further stated that the word ethics should be mentioned prominently. Dr. Eccleston stated that a set of ethics as they understood it was only applicable to licensed professionals, as they must adhere to a certain set of ethical principles as part of their licensure in this state. Dr. Eccleston did state that he agreed with Mrs. O'Neal and would like to see ethical principles applied to anyone who works in our system.
- Ms. O'Neal asked if, once certified, the peer support specialist would be listed under paraprofessional, associate professional, or qualified professional. Dr. Eccleston responded that the workgroup has not had any discussions regarding the placement of the peer support specialist, but the workgroup would look into this further.
- Jennifer Brobst, Commission member, asked if there were plans to increase recommendations of supervision at assessment levels. Dr. Eccleston responded that one of the issues that the workgroup had to deal with was the state Psychology Board has brought to the Division's attention that they had real concerns about non licensed Qualified Professionals (QPs) and Paraprofessionals doing clinical work in our system. The State Psychology Board stated that this could be a violation of the state statute; the workgroup has had to interweave these concerns with their discussion about what skill standards did we put in non-licensed QPs, Paraprofessional and Associate Professional. In the assessment domain, the workgroup thought that clinical assessment is something that is done by licensed professionals. If there are assessment activities that can be done by QPs, they would also have to be under the supervision of a licensed professional.
- Ms. Brobst also asked if the workgroup had any intention under the column for Skill Standards: Paraprofessional & Associate Professional, of stating what cannot be done. Dr. Eccleston responded that the information is already in state statute.
- Ms. Ehlers asked who would be making the competency determination decision and how? Dr. Eccleston advised that this would be discussed during the next phase.

- Mr. Owen, stated that a clear ethical standard needs to be developed for the Paraprofessionals. Mr. Owen further stated that licensed professional could be mandated under the continuing education requirements.

Access to Healthcare: H1N1 and Flu Prevention

Joanna Forester, Disaster Preparedness and Response Coordinator, Operations Support Section, NC Division of MH/DD/SAS, gave a presentation on *DMH/DD/SAS and DSOHF: Response to Novel Influenza A (H1N1).* Ms. Forester gave a summary of the Division's efforts with the healthcare facilities and the response to the Novel Influenza A (H1N1). She noted that the grant provides for: (1) hiring a nurse – infectious disease control; (2) purchase of refrigerators to house the vaccine; and (3) purchase of additional personal protective equipment

Ms. Forester received the following questions and comments from the Commission:

- Mr. Finch commented on how little time professionals have been taking to think through what their response would be as they balance their professional obligations with their family obligations. Ms. Forester agreed and stated that the guidance indicated there would be a 40% reduction in staff, which could be due to illness, death, or taking care of a loved one. She also mentioned the importance of having a continuity of operations plan that addresses essential functions and ensures appropriate staffing.
- Ms. Brobst stated at her office, most of the families they serve would not have read all the emails to enable them to receive accurate and clear information. Ms. Brobst further stated that they did not receive any flyer from their LME to put in the waiting room for the consumers and asked if the Division could create something to send to the provider for their consumers. Ms. Forester stated that there is information on the Centers for Disease Control (CDC) web site that can be printed out by the agencies for their consumers. Ms. Forester stated that if this was not getting done, the back-up would be to make sure that the LME is sending out the information.

Finalize 2010 Priority Areas for Advisory Committee

Dr. Olley suggested that this area of discussion be tabled until the February meeting. Dr. Olley continued by stating that the Advisory Committee can review all of the topics during its January meeting and submit a recommendation to the full Commission in February.

Upon motion, second, and unanimous vote, the Commission approved to table the discussion on Finalizing 2010 Priority Areas for the Advisory Committee until the Commissions February meeting.

Public Comment

There were no comments from the public.

There being no further business, the meeting adjourned at 2:38 pm.